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No. 90-325

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

FREEPORT TRANSPORT, INC.,
Petitioner,
v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, WAREHOUSEMEN AND HELPERS OF AMERICA;
and LOCAL 538, GENERAL TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS, AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA,
Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Pennsylvania

INTERNATIONAL BROTHERHOOD OF TEAMSTERS'
BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the State Supreme Court Decision Raises Federal Question Jurisdiction?

2. Whether This Court Should Substitute Its Judgment On The Facts For That Of The State Supreme Court?

LIST OF PARTIES TO THE PROCEEDING

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local 538, General Teamsters, Chauffeurs, Warehousemen and Helpers, affiliated with the International Brotherhood of Teamsters, Warehousemen and Helpers of America were defendants in the Court of Common Pleas of Butler County, Pennsylvania; appellants in both the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania; and the respondents in this Court.

Freeport Transport, Inc. was a plaintiff in the Court of Common Pleas of Butler County, Pennsylvania; an appellee in the Superior Court of Pennsylvania; and an appellee and cross-appellant in the Supreme Court of Pennsylvania; and is petitioner in this Court.

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**INTERNATIONAL BROTHERHOOD OF TEAMSTERS'
BRIEF IN OPPOSITION**

The petitioner, Freeport Transport, Inc., has prayed that a Writ of Certiorari issue to review the judgment of the Supreme Court of Pennsylvania in this case.

OPINIONS BELOW

The Findings of Fact, Conclusions of Law, and Verdict of the Court of Common Pleas of Butler County, Pennsylvania are not officially reported, but are reprinted in the Appendix to the Petition. The Opinion of the Superior Court of Pennsylvania is reported at 362 Pa. Super. 628, 520 A.2d 67 (1986); it is reprinted in the Appen-

dix to the Petition. The Opinion of the Supreme Court of Pennsylvania is reported at 568 A.2d 151 (Pa. 1990) and is reprinted in the Appendix to the Petition.

JURISDICTION

The Court lacks jurisdiction to review the Supreme Court of Pennsylvania's decision. The decision by Pennsylvania's highest court does not draw in question the validity of a statute of the United States; does not challenge a state statute as being repugnant to the laws of the United States; and does not raise any title, right, privilege or immunity established by a law of the United States. Contrary to the Petition, no jurisdiction under 28 U.S.C. Section 1257 (3) exists in this case.

STATUTES INVOLVED

This case involves Section 8 of the Pennsylvania Labor Anti-Injunction Act, Act of June 2, 1937; P.L. 1198, No. 308, 43 P.S. 206(h), which provides that:

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute as herein defined, shall be held responsible or liable in any civil action at law or suit in equity or in any criminal prosecution for the unlawful acts of individual officers, members or agents, except upon proof beyond a reasonable doubt in criminal cases, and by the weight of evidence in other cases, and without the aid of any presumptions of law or fact, both of —(a) the doing of such acts by persons who are officers, members or agents of any such association or organization; and (b) actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof by such association or organization.

STATEMENT OF THE CASE

Pursuant to its certification in 1974 by the National Labor Relations Board, Local 538, General Teamsters, Chauffeurs, Warehousemen and Helpers, affiliated with the International Brotherhood of Teamsters ("Local 538") became the exclusive bargaining representative for the drivers and mechanics of Petitioner Freeport Transport, Inc. ("Freeport"), a Pennsylvania corporation. Freeport and Local 538 negotiated and became the only signatories to their initial collective bargaining agreement, covering the period September 16, 1974 to August 3, 1977.

In June 1977, Local 538 and Freeport commenced negotiations for a second bargaining agreement to replace the one which was scheduled to expire on August 3, 1977. When the parties failed to settle a contract before the expiration date, Local 538's members unanimously voted to commence a strike which began on August 4 and lasted until November 19, 1977.

Freeport, on September 25, 1979, filed this action against Local 538 and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America ("IBT") to recover alleged damages resulting from the strike. Local 538 and the IBT separately sought to have the case removed from state to federal court. However, the Court of Common Pleas of Butler County, Pennsylvania denied the removal petitions because the case involved an injunction against alleged strike line violence.

Following the trial, the Court of Common Pleas found in favor of Freeport and against Local 538 and the IBT; awarded a judgment for compensatory damages in the amount of \$51,753.82 against both union defendants; and punitive damages against the IBT in the amount of \$500,000.00. Separate appeals were filed by the IBT and Local 538 to the Superior Court of Pennsylvania. The Superior Court affirmed the judgment for compensatory

damages entered in favor of Freeport against both the IBT and Local 538, but modified the judgment for punitive damages against the IBT, by reducing the award from \$500,000.00 to \$250,000.00.

The Superior Court, in its Memorandum of October 15, 1986 (reprinted in the Appendix to the Petition), held that the "IBT's liability was based on the actions of its agent, Jack Robinson [Robinson], not on the actions of Local 538 personnel." The Superior Court rejected the IBT's argument that Section 206(h) of the Pennsylvania Labor Anti-Injunction Act required that union liability for actions of individual officers, members or agents, be based on "clear and convincing" proof that the union actually participated in, or actually authorized such acts, or ratified such acts after actual knowledge thereof by the union. In rejecting the IBT's argument, the Superior Court stated:

Pennsylvania law is to the contrary. *Fife v. Great Atlantic & Pacific Tea Co.*, 356 Pa. 265, 268, 52 A.2d 24, 34 (1947) held that a union was not liable for acts unless it can be shown, *by a preponderance of the evidence*, that the acts were done by officers, agents or members, and that the union participated, authorized or ratified such acts. (Emphasis added)

Local 538 and the IBT filed separate appeals of the Superior Court opinion on the issue of liability, while Freeport appealed the Superior Court's modification of the punitive damage award. In response to these appeals, the Pennsylvania Supreme Court issued its opinion, on January 3, 1990, stating that the Court "granted allocatur [on the parties' appeals] to review the matter in light of our recent decision in *Gajkowski v. International Brotherhood of Teamsters*, 519 Pa. 320, 548 A.2d 533 (1988)." (See Pa. Supreme Court decision in the Appendix to the Petition).

The Pennsylvania Supreme Court's *Freeport* decision further stated that "[i]n *Gajkowski*, we addressed the

issue of the liability of a union for injuries arising out of violence during strikes under Section 8 of Pennsylvania Labor Anti-Injunction Act . . .” According to the State Court, “Section 8 of the Pennsylvania Act is substantially similar to the language of Section 6 of the Norris-La Guardia Act, 29 U.S.C. Section 106, which has been interpreted by the U.S. Supreme Court to preclude the use of either a standard agency or respondeat superior analysis to hold a union vicariously liable for the torts of its officers, members, and agents.”

The State Supreme Court decision in *Freeport* stated:

“[w]e concluded in *Gajkowski*, and now reiterate, that, as does Section 6 of the Norris-LaGuardia Act, Section 8 of Pennsylvania Anti-Injunction Act requires a higher showing than the common law rules of agency to establish a union’s liability. Imposing a more stringent standard to establish the liability of a union for damages resulting from unlawful acts committed during a strike advances the policy underlying Section 8 of the Pennsylvania Anti-Injunction Act to protect the unions from the potential crippling effect of lawsuits premised on a showing of fault based on mere agency.”

In conclusion, the Pennsylvania Supreme Court held that Section 8 of the Pennsylvania Anti-Injunction Act requires that union liability for alleged unlawful acts be predicated on “clear proof” of participation in, authorization, or ratification of such acts after actual knowledge. According to the State Supreme Court, “[r]eview of the record including the extensive findings of fact made by the trial judge fails to establish the clear proof necessary to support a finding of liability of IBT”. With regard to the acts of Jack Robison, the State Supreme Court held that “it is clear that the appellee [Freeport] simply did not establish that IBT actively participated in or ratified the actions of Robinson [Robison] or other individual participants.”

In its petition for writ of certiorari, Freeport seeks to have this Court substitute its judgment for that of the Pennsylvania Supreme Court in interpreting the meaning of the state statute and in determining whether the facts establish "clear proof" evidence for union liability.

REASONS FOR DENYING THE WRIT

I. THE STATE SUPREME COURT DECISION DOES NOT RAISE FEDERAL QUESTION JURISDICTION

It is a well established principle of this Court that the petitioner bears the burden of establishing federal question jurisdiction for this Court to review a judgment of the highest court of a state. *Durley v. Mayo*, 351 U.S. 277, 281, 100 L.Ed. 1178, 76 S.Ct. 806 (1956); *Michigan v. Long*, 463 U.S. 1032, 1042, n.8, 77 L.Ed 2d 1201, 103 S.Ct. 3459 (1983). In the case at bar, Petitioner Freeport cites 28 U.S.C. § 1257(3) as the basis for this Court's jurisdiction, but fails to demonstrate that the Pennsylvania Supreme Court's decision denies Petitioner any right or privilege guaranteed by federal law.

To determine whether jurisdiction exist to review an opinion of the highest court of a state, this Court has held that "[i]f the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision." *Michigan v. Long*, 463 US *supra* at 1041. The mere reliance on federal precedent as guidance in a state court opinion does not warrant review by this Court. *Id.*

In the instant case, the Pennsylvania Supreme Court clearly stated in its opinion that it granted "allocatur" on the appeals of the IBT, Local 538, and Freeport to review the issues in light of its recent decision in *Gajkowski v. International Brotherhood of Teamsters*, 519 Pa. 320, 548 A.2d 533 (1988).

In *Gajkowsik*, *supra* at 858, the Pennsylvania Supreme Court reiterated its holding in *Philadelphia Marine Trade Association v. International Longshoremen's Association*, 453 Pa. 43, 308 A.2d 98 (1973) for determining union liability for alleged unlawful acts:

"For a labor organization to be liable for 'participation' pursuant to Section 8 of the Anti-Injunction Act, a jury must find that (1) the acts were committed by officers, members or agents of the organization and (2) the organization actually participated upon clear proof. *Philadelphia Marine*, *supra* at 52, 308 A.2d at 103" [citations omitted]

The state Supreme Court, in *Gajkowski* at 856, articulated a sound basis for the higher standard required by the state statute:

"Protecting unions from damage awards which would impinge upon the collective rights of workers is the clear import of Section 8. *Supra* at 855. The protection is available regardless of the theory that the plaintiff pursues. The purpose of this section's higher standard of proof in civil actions is the protection of the worker's right to collective bargaining without exposing his union to the higher cost engendered by the agency notion of *respondeat superior*. Since the union generally has no pool of profits with which to withstand the impact of unanticipated and costly damage awards, it could well be destroyed by an inadequately established claim."

The Pennsylvania Supreme Court in *Gajkowski* and in its *Freeport* decision interpreted Section 206(h) of the Pennsylvania Anti-Injunction Act as intended to have the same purpose as Section 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106.¹ The State Supreme Court pro-

¹ Section 6 of the Norris-LaGuardia Act states:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, mem-

ceeded to analyze the relevant facts and issued "a plain statement" setting forth a separate, adequate and independent basis for its opinion, as required by *Michigan v. Long*, *supra* at 1041. In this regard, the Pennsylvania Supreme Court stated:

"In the instant appeals, both the IBT and Local 538 contend that there was insufficient evidence to establish their liability for the violent and destructive acts which occurred during the strike. To establish the liability of a labor organization for participation under Section 8 of the Anti-Injunction Act, the fact finder must determine (1) that the acts were committed by officers, members, or agents of the organization and (2) the organization actually participated in, authorized, or ratified such acts after actual knowledge thereof. A finding of participation must be predicated upon clear proof and may be based upon circumstantial evidence. In determining whether a labor organization has actually participated in the commission of an act, the number of persons involved, the status of those persons in the organization, awareness of the acts, and the organization's ability to exercise control over the acts, are all relevant considerations.

Review of the record including the extensive findings of fact made by the trial judge fails to establish the clear proof necessary to support a finding of liability of IBT.

This Court has acknowledged that it is bound by the interpretations of state law by a state's highest court. *O'Brien v. Skinner*, 414 U.S. 524, 531, 38 L.Ed 2d 702, 94 S.Ct. 740 (1974); *California v. Harold Freeman*, 488 U.S. —, 102 L.Ed 2d 957, 109 S.Ct. 854 (1989).

As the Pennsylvania Supreme Court's opinion at issue herein constitutes an interpretation of state law and con-

bers or agents, except upon *clear proof* of actual participation in, or actual authorization of, such acts or of ratification of such acts after actual knowledge thereof." [Emphasis added]

tains a "plain statement" supporting its conclusion which is independent of federal law, this Court lacks federal question jurisdiction to review the opinion. Accordingly, the petition for writ of certiorari should be denied.

II. PETITIONER SEEKS TO HAVE THIS COURT SUBSTITUTE ITS JUDGMENT ON THE FACTS FOR THAT OF THE STATE SUPREME COURT

This Court will not substitute its judgment for that of the state when it becomes necessary to analyze the evidence for the purpose of determining whether it supports the findings of a state court. *Garner v. Louisiana*, 386 U.S. 157, 166, 7 L.Ed. 2d 207, 82 S.Ct. 248 (1961). Customarily, this Court accords "great weight to the views of the state's highest court" on state-law matters and "accept the factual findings of state courts in the absence of exceptional circumstances." 324 *Liquor Corp. v. Duffy*, 479 U.S. 335, 351, 93 L.Ed 2d 667, 107 S.Ct. 720 (1987) and cases cited therein.

Following an extensive review of the trial court's findings of fact, the Pennsylvania Supreme Court stated:

While the actions of the various individuals as cited above were abhorrent, the record fails to disclose any evidence connecting IBT to the individual incidents of violence. With regard to IBT, the actual knowledge and assent under Section 206(h) of the Pennsylvania Act is simply lacking. While certainly circumstantial evidence can be used to establish participation and ratification, that circumstantial evidence must establish clear proof of the facts being offered. This record does not provide such clear proof in the case of IBT.

In its petition, Freeport seeks to have this Court substitute its view of the facts for that of the Pennsylvania Court. The petition sets forth a detailed re-argument of the facts and maintains that the State Court erred by not finding "clear proof" of union liability. Petitioner

makes no effort to establish "exceptional circumstances" warranting this Court not to accept the factual findings of the state court.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari to the Pennsylvania Supreme Court should be denied.

Respectfully submitted,

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